

1 Virginia commission has ever waived the notice
2 requirement as part of the emergency stay process?

3 MR. WHITT: I believe last -- I guess when
4 we were going through this process last -- this past
5 winter, I'm trying to think if it ever escalated to
6 that point, because we basically got to a point
7 where we were able -- we were able to prove that a
8 previous settlement, some of the adjustments had not
9 been made, so I don't think the Virginia commission
10 had to step in and actually hold anything off,
11 because I think we decided we would have a couple
12 more face-to-face meetings and then at that point we
13 were able to work out a settlement down the road, so
14 I don't think they acted actually on that.

15 MR. ADAMS: Okay. Well, in a similar
16 vein, as I understand it, your main concern here, or
17 at least the one that seems to be the main concern,
18 is the competitive disadvantage that's caused by the
19 effect of the embargo within the environment of the
20 Virginia requirement that you provide notice to the
21 customers.

22 MR. WHITT: Right, yes.

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

1 MR. ADAMS: And I understand that you
2 don't believe that this would be more properly
3 addressed on a statewide basis before the Virginia
4 commission; is that correct?

5 MR. WHITT: I'm not sure I understand your
6 question on that.

7 MR. ADAMS: In other words, maybe having
8 the Virginia commission look at the competitive
9 disadvantage that this requirement puts you in in
10 this situation.

11 MR. WHITT: Have them reevaluate their
12 requirement to give notice?

13 MR. ADAMS: Yes. Yes.

14 MR. WHITT: I guess we felt like as part
15 of the whole interconnection, we would address the
16 issue, as part of the whole process.

17 MR. ADAMS: So there's no way to sort of
18 in the context of an embargo, try to relieve -- you
19 don't see any process that they could institute?

20 MR. WHITT: At that time or procedurally
21 going forward?

22 MR. ADAMS: Yes.

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

1 MR. WHITT: Procedurally going forward? I
2 think it's something they probably could address if
3 we wanted to carve it out separate from this whole
4 interconnection negotiation.

5 MR. ADAMS: And I think -- and I'm not
6 trying to characterize but I'm going to have to,
7 sort of, a little bit, Verizon's position on this.
8 I think that they have got two concerns. Obviously,
9 they want to protect -- you can correct me,
10 Mr. Smith, if I'm mischaracterizing it. They want
11 to protect themselves and have the ability to have
12 an embargo, and they're also concerned about any
13 abuse of this that could be done by of course not
14 you guys, but some other CLEC that might adopt this.

15 Do you see any protections that you could
16 put into your language that would address those
17 concerns?

18 MR. WHITT: I think we're comfortable with
19 the language as we have it, in terms of -- I think
20 we feel like the embargo process works. We've
21 unfortunately been subject to it in other states.
22 We didn't have this particular provision about

1 notifying customers. And I think even in Virginia,
2 even though we didn't get to that point, that it
3 brought both sides to the table, and I think it
4 would have whether or not there was notice required
5 to be given to the customer.

6 I mean, it's pretty serious, even if -- if
7 you're talking an embargo, whether or not you're
8 going to cut off our existing customers or deny
9 service because you always have customers that may
10 be growing with Cavalier that may have emergency
11 needs and may have to have additional services
12 installed if they're growing.

13 And you know, I think in the past, the
14 process has worked. We just feel like there's no
15 real need to cause our customers to be panicked. We
16 have 150,000 customers, and we feel like that's
17 fairly extreme to go to that level.

18 MR. ADAMS: Just out of curiosity -- and
19 you may have addressed this in your testimony, but
20 it wasn't clear to me -- have you actually had to
21 issue these notices to customers as a result --

22 MR. WHITT: No, no.

1 MR. ADAMS: Okay. And I'm going to start
2 with a similar question for you, Mr. Smith. Is
3 Verizon aware of any interconnection agreements that
4 contain similar language?

5 MR. SMITH: To which language, our
6 language or Cavalier's language?

7 MR. ADAMS: Cavalier's proposed language.

8 MR. SMITH: No, no, I'm not.

9 MR. ADAMS: If the arbiter were to
10 conclude that within the context of existing
11 Virginia law, that this did create a competitive
12 disadvantage that needed to be addressed, are there
13 any alternatives to their language that you might
14 use to modify that?

15 MR. SMITH: Not that I've been able to
16 identify, because I believe their language is
17 actually requiring the commission to issue an order,
18 in order for us to proceed with an embargo or
19 termination, and that's something we have no control
20 over whether or not the Virginia commission would or
21 would not issue an order. So they have effectively
22 pre -- potentially precluded us from pursuing, you

1 know, a remedy here. And I don't think you know, in
2 our interconnection agreement, we can bind the
3 commission to do something.

4 MR. ADAMS: This just occurred to me and
5 this is completely off the cuff. Was there any
6 consideration of sort of like a private arbitration
7 or private mediation prior to the embargo? And I
8 address that to either party. Is that a possibility
9 to address -- assuming that a private resolution
10 would go quicker than --

11 MR. SMITH: I mean, the issue here is not
12 that we have a dispute. The issue here is that we
13 have not been paid for services that we have
14 provided, and at that point, we are continuing to
15 provide those services so we are continuing, if
16 we're not being paid, to have charges, you know,
17 continue to pile up and potential losses.

18 What we're trying to do here is
19 effectively limit our potential losses. And I'm not
20 sure that some type of arbitration compels somebody
21 to pay us. I mean, that's -- that's really what
22 we're after here, is to receive payment for services

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

1 for which we have provided.

2 MR. ADAMS: Well, the way I was
3 contemplating that was the arbitration being to
4 determine whether or not there was a legitimate -- I
5 think their concern is that you can unilaterally
6 decide that there's a legitimate -- or there is no
7 legitimate dispute and withhold services, and
8 Mr. Whitt, is that --

9 MR. WHITT: Yeah. I mean, and really the
10 embargo process really cuts both ways. I mean, we
11 actually embargoed Verizon, I believe, in Delaware.
12 So it does kind of cut both ways under the embargo
13 process.

14 But I think if we were to do that in
15 Virginia, I don't think Verizon would want to give
16 notice to its customers. I'm sure it wouldn't want
17 to give notice. It would be a lot more cumbersome
18 and probably bigger impacts. But we could do that.
19 I mean, we could certainly embargo them in Virginia
20 for various reasons since they're a big payer to us.

21 MR. SMITH: And in Virginia, I'm not sure
22 that an embargo by Cavalier of Verizon does anything

1 to our end users. I mean, that's -- because the
2 reason we would be embargoing is because we are
3 providing the underlying service and facilities that
4 they are selling to their customers. Here it's
5 interconnection only, I think, from what Verizon --

6 MR. ADAMS: I think I just lost control of
7 the witnesses.

8 (Laughter.)

9 If we could go back to the idea of
10 arbitrating whether -- I was trying to determine
11 whether your concern was the unilateral
12 determination.

13 MR. WHITT: We've used arbitration in the
14 past on other issues -- with utilities, we've done
15 that in the past, so I'm not going to say we'd be
16 opposed to it.

17 MR. ADAMS: Not arbitrating the need to
18 pay payment but just arbitrating whether or not
19 there is a cause for the embargo.

20 MR. WHITT: We probably would be open to
21 that. I mean, we've done it in the past on
22 different types of issues.

1 MR. ADAMS: Mr. Smith, do you have any
2 comments about it?

3 MR. SMITH: I mean, I think there are ways
4 for disputes, whether a dispute is bona fide, there
5 are ways to resolve that. And again, when I look at
6 this provision, it's really not questioning whether
7 or not the dispute is bona fide. It's for charges
8 that are legitimately owed and past due. One
9 concern is, you know, if you drag this on with other
10 types of arbitration, you continue to pile up
11 charges, while, you know, a good core of money is
12 sitting there that is past due and owed to Verizon,
13 yet not being paid.

14 MR. ADAMS: On a note similar to what was
15 previously brought up, we do have a request
16 concerning the briefing of this issue, and we would
17 like the parties to address any effects that the
18 Commission's discontinuation rules 63.71 have on
19 this issue. And I think that's all I have.

20 MR. LERNER: Anyone else? Okay. All the
21 testimony on this is already in, so let's take a
22 10-minute break and then we'll proceed with issue

1 C16.

2 (Recess.)

3 MR. LERNER: All right. I guess we're
4 ready for the last issue of the day, C16. Would you
5 introduce yourself?

6 MR. YOUNG: I'm Alan Young, senior staff
7 consultant for Verizon.
8 Whereupon,

9 ALAN YOUNG

10 was called as a witness and, having first been duly
11 sworn, was examined and testified as follows:

12 MR. LERNER: I think it's their turn to go
13 first, if they have any questions.

14 MR. PERKINS: I apologize.

15 MS. NEWMAN: Go ahead.

16 MR. PERKINS: I cede to the proper order.

17 MR. LERNER: Does that mean you don't have
18 any questions?

19 MS. NEWMAN: We don't have any questions.

20 MR. PERKINS: Mr. Ashenden has a
21 demonstrative exhibit and everything.

22 MR. ASHENDEN: I beg your pardon?

1 (Laughter.)

2 CROSS-EXAMINATION

3 BY MR. PERKINS:

4 Q Good afternoon, Mr. Young. Do you have
5 any direct, hands-on experience with the pole
6 attachment permitting or licensing process in
7 Virginia?

8 A My job as a senior staff consultant in the
9 engineering group makes me responsible for
10 developing some of the policies and procedures that
11 the folks in the various states, Virginia included,
12 implement and follow. So I have that aspect of it.

13 Q Okay. Have you ever dealt with a CLEC
14 application for a pole attachment license or permit
15 in Virginia -- dealt directly with that?

16 A Not directly, no.

17 Q Okay. On page 3, lines 7 through 11 of
18 your direct testimony, you speak about
19 nondiscriminatory access to poles; is that correct?

20 A Which line?

21 Q Lines 7 through 11 on page 3.

22 A Yes.

1 Q Does nondiscriminatory access in all cases
2 mean efficient access?

3 A Nondiscriminatory access for Verizon means
4 that we treat all applicants in the same manner.
5 They are -- whether it's CLEC, the cable TVs,
6 anybody in the licensing process gets treated in the
7 same manner, same time frames, and uses a standard
8 license agreement.

9 So each and every application that comes
10 in is first come, first served.

11 Q Does that necessarily mean that the
12 process is efficient?

13 A It's the process that Verizon follows. We
14 feel it's efficient for our purposes.

15 Q On page 8, lines 8 through 16 of your
16 direct testimony --

17 A Page 8, you said?

18 Q Yes, sir. I believe you state that there
19 is no basis for Cavalier to describe Verizon's
20 process as inefficient. Is that true?

21 A That's true.

22 Q Now, isn't it true that Cavalier submitted

1 a number of applications for pole attachment permits
2 or licenses during the '98 through 2001 time frame?

3 A That's true, yes.

4 Q Okay. Is that experience not a valid
5 basis for Cavalier to describe whether it believes
6 the process is efficient or inefficient?

7 A No, I don't believe it is a valid basis,
8 because in that time frame that you gave many
9 applications to Verizon, along with others, we were
10 in the process of centralizing a group that handles
11 all applications. At the time that many of those
12 applications were submitted, they didn't go through
13 the SPOC, or the central location that's presently
14 in effect.

15 Those jobs, many of those requests that
16 came in, weren't project-managed in the same way
17 that they're project-managed now by our Verizon
18 contracts and agreements folks that are located in
19 Richmond.

20 Q When did that change occur?

21 A During the time frame of these -- this
22 time frame, that center was being brought on line

1 gradually throughout the state. It was already a
2 center that was involved with some of the billing
3 issues, but as far as all of the license agreements
4 and the actual applications funneling into one
5 location, being tracked into a database and followed
6 throughout the process, it was in that time frame
7 that that whole operation was being brought online.

8 Q When was that process completed, if it is
9 completed?

10 A That process is completed.

11 Q Okay. When was it completed?

12 A I'm going to say probably most of the
13 agreements in the 2001-2002 time frame. There is,
14 you know, agreements that keep cropping up all over
15 the place, but everything is funneled through there.

16 Q Why is that change in process not
17 described in your direct or rebuttal testimony?

18 A That was a process that was being
19 implemented, and I didn't see why, you know -- don't
20 see why that's important for it to be in my
21 testimony. The SPOC has been in progress for a
22 while.

1 Q Is there any documentation to reflect that
2 process, to implement the SPOC?

3 A If our methods and procedures, I believe,
4 that were public record in our 271 filing and
5 everything described that central location, I
6 believe.

7 Q For the benefit of the court reporter,
8 "SPOC" is single point of contact, SPOC; is that
9 correct?

10 A Yes, that's true, and they're located in
11 Richmond.

12 Q Does that SPOC coordinate Verizon's
13 make-ready engineering work?

14 A Coordinate it?

15 Q Direct, manage.

16 A When the make-ready work payments received
17 by the SPOC or authorization is given by Cavalier,
18 let's say, to then to authorize that work, the job
19 is then -- the final design of the job is done and
20 then given to our construction people to schedule in
21 with and along with Verizon's work and along with
22 any other CLEC's work that's in progress.

1 Q So that SPOC handles more paperwork
2 processing? Is that accurate to say, and the
3 construction and engineering group handles the
4 actual work itself?

5 A Yes. Engineering does the design work;
6 the construction folks would be responsible for
7 getting the construction work done, yes.

8 Q For doing the actual make-ready work on
9 the poles?

10 A Right. But all dates and following of the
11 process goes through the SPOC.

12 Q On pages 8 and 9 of your direct testimony,
13 you disagree, I believe rather strongly, with the
14 mention of a Cavalier outside plant handbook and
15 also with a 45-day time frame for make-ready work
16 completion; is that correct, as a sort of general
17 description of your testimony?

18 A Yeah. On page 9 under my reply on lines
19 11 and 12, I state basically that, you know, the
20 engineering and the preparation of -- the design of
21 the job is done within the 45 days, not all the
22 make-ready work.

1 Q If Cavalier were to omit use -- reference
2 to the Cavalier outside plant handbook and maintain
3 the NESC, NEC and blue book references, and
4 implement some sort of reasonable time frame based,
5 in part, on this 60-day period for notice, would
6 that remove a large part of your objections to this
7 proposed process or, if not, what would be the --
8 well, let me ask you that question.

9 A You were asking me a couple questions
10 there, I think.

11 Q Yes. Let me stop at one.

12 A As far as the Cavalier handbook, we don't
13 follow Cavalier's handbook. We do follow the
14 National Electric Safety Code, National Electric
15 Code, the Telcordia blue book, which is generally a
16 standard that everyone uses, including Verizon,
17 Cavalier and others. And then we have of course
18 other old -- the AT&T and some of the practices,
19 Bell Corp. telephone practices that we follow. I've
20 never seen Cavalier's book, and we wouldn't design
21 our jobs from that.

22 Q My point was if we struck that reference

1 entirely, got rid of the reference to Cavalier's
2 handbook, and altered that time frame to something
3 that accommodates --

4 A I can't agree to the altering of the time
5 frame.

6 Q I'm saying, alter the time frame we
7 suggest, Cavalier suggested, to 45 -- of 45 days
8 make-ready work to something more reasonable?

9 A No, I can't agree with that concept,
10 because we are allowed 45 days to process that
11 application. The FCC has, you know, given us that
12 time frame. We can deny that application in that
13 time. If there's no make-ready work, we would
14 certainly grant the application within that time
15 frame.

16 But nothing has ever been stated that we
17 have to provide a specific time frame for the
18 completion of the make-ready work. There's a 60-day
19 notice process in there, which adds time to that.

20 In addition, not all jobs are the same.
21 We have -- we also -- Cavalier is not our only
22 customer. We are processing applications for many

1 other customers, as far as CLECs, cable TV and
2 whatnot. All of those jobs are scheduled on a first
3 come, first served basis and put into the chute. We
4 do not -- and our agreement, as it states right now,
5 is that we don't define that time frame of
6 completing make-ready work.

7 Q On page 2, lines 4 through 5 of your reply
8 testimony --

9 A Page 2, 4 through 5?

10 Q Yes, sir. You discuss Cavalier's
11 description of Verizon as a lone holdout and say
12 that the opposite is true; is that correct?

13 A That's true.

14 Q What's the basis for that assertion?

15 A The basis for that assertion was, I've had
16 conversations with the gentleman in the SPOC, which
17 we mentioned down below, Don Cameron, who was
18 present at that meeting that was referenced there,
19 and based on his conversations with me and what
20 happened at that meeting, Verizon was not the lone
21 holdout.

22 Q Have you reviewed Exhibit 10 to

1 Mr. Ashenden's rebuttal testimony, a contract
2 between Media One and Cavalier pertaining to
3 make-ready work?

4 A I've seen it, yes.

5 Q Would you agree that that contract
6 generally -- well, strike that.

7 Is it your understanding that that
8 contract allowed a single contractor to do
9 make-ready work for Cavalier and Media One?

10 A That's what that contract leads you to
11 believe, yes.

12 Q So then -- okay. Are you specifically
13 aware of whether MFN ever agreed or did not agree to
14 use of a single contractor for make-ready work?

15 A No, I'm not aware of that.

16 Q Not of your own personal knowledge or
17 through your conversations with Mr. Cameron?

18 A I have no knowledge of that, whether that
19 ever took place.

20 Q How about with respect to Comcast?

21 A With com -- no, I'm not aware of anything.

22 Q With respect to MCI WorldCom?

1 A No, I'm not aware.

2 Q There's two more. With respect to KMC?

3 A I'm not aware.

4 Q And with respect to Cox?

5 A I'm not aware, no.

6 Q So you don't know whether those parties
7 agreed or disagreed to the use of a single
8 contractor?

9 A No, I don't.

10 Q On page 3, lines 4 through 5 of your
11 rebuttal testimony, I think you discuss the fact
12 that there was no invitation after that May 3, 2000
13 meeting by Cavalier to Verizon to any other meetings
14 or discussions -- or to any other meetings about a
15 single make-ready process; is that correct?

16 A That's correct.

17 Q Now, do you know if any other party such
18 as Virginia Power ever asked Verizon to attend a
19 meeting to discuss that subject?

20 A I know of no other meeting that Verizon
21 was asked to go to, other than that, what was it,
22 May 3, 2000 meeting. I don't know of any other one.

1 Q Okay. How about any discussions of a
2 single make-ready process after that date?

3 A Not that I'm aware of.

4 Q On pages 3 and 4 of your reply testimony,
5 you say you are skeptical about a single make-ready
6 process having occurred in eastern Virginia; is that
7 correct?

8 A That's correct.

9 Q Do you know for sure whether any such
10 process was used?

11 A My understanding is, we -- Mr. Cameron and
12 his organization understood that there was the
13 possibility of something going on between some
14 parties, Cavalier and, I assume, Virginia Power, but
15 we were never able to confirm that that trial ever
16 took place, ever got off the ground.

17 Q But you don't know that it didn't take --

18 A Nobody would answer our questions when we
19 asked that question, so --

20 Q Do you know who you asked?

21 A Who -- I believe we asked your -- in our
22 request for data, we asked you guys, and we didn't

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

1 get any response.

2 Q Oh, I'm -- did you ask anyone at the time?

3 A The gentleman -- Don Cameron has asked a
4 couple contacts that he had in the eastern area,
5 especially to make sure that we didn't have some
6 local engineering folks that were asked.

7 Q But you don't know for sure that that did
8 not occur, the use of this process in eastern
9 Virginia?

10 A No, I don't know for sure whether it ever
11 happened.

12 Q Okay, good enough. Did the implementation
13 of the single point of contact for permitting -- did
14 that change the actual make-ready engineering or
15 make-ready construction work processes at Verizon?

16 A The question again, please?

17 Q The single point of contact that we
18 discussed with respect to permitting and licensing,
19 did that change the actual make-ready engineering or
20 make-ready construction processes at Verizon?

21 A Didn't change the actual process, other
22 than the fact that when the request comes in, it's

1 logged, it was sent to engineering, we specifically
2 track the 45 days to make sure they're not sitting
3 on the jobs and waiting to make answers, so we reply
4 in a correct time frame.

5 When we receive information back from
6 Cavalier as to the go-ahead on the make-ready work,
7 when we send back the form and the payment for that,
8 the SPOC would get that and send it to construction
9 to get it scheduled. And at that time, that job,
10 you know, the SPOC is tracking how long that job has
11 been in existence to make sure work starts on it in
12 a timely manner. It's that point of the process
13 changed. The actual make-ready is all different,
14 depending on the pole that it's on.

15 Q Would it be fair to characterize that
16 process change as an administrative improvement,
17 then?

18 A I believe it's an administrative
19 improvement that, you know, that gave us a tool to
20 track time frames to make sure stuff is getting done
21 in a timely manner.

22 Q I have one last question for you, and I

1 can find a reference if you like, but I believe at
2 one point you referred to union contracts as a
3 potential obstacle to a single make-ready process.
4 Is that correct?

5 A Yes, yes.

6 Q Have you reviewed those contracts?

7 A I'm not a contract lawyer, but I have read
8 it. My interpretation of that is in that agreement,
9 our core employees, union folks, are given the work
10 of handling the fiber broad band type technology
11 cables.

12 MR. LERNER: A second final question?

13 (Laughter.)

14 MR. PERKINS: No, we're just trying to
15 make sure we're wrapped up. Thank you, Mr. Young.

16 THE WITNESS: Thank you.

17 MR. ADAMS: Okay. I'm going to start with
18 Mr. Ashenden. I believe it was on page 6 of your
19 testimony, you discuss the Delaware proceeding, you
20 say that "Cavalier has previously"; is that correct?

21 MR. ASHENDEN: Which line are we
22 referencing here?